



1           A.     An ALJ Must Provide Specific and Legitimate Reasons to Reject the  
 2                     Contradicted Opinion of a Treating Physician

3           “As a general rule, more weight should be given to the opinion of a treating  
 4 source than to the opinion of doctors who do not treat the claimant.” *Lester v.*  
 5 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *accord Benton ex. rel. Benton v. Barnhart*,  
 6 331 F.3d 1030, 1036 (9th Cir. 2003). This is so because a treating physician “is  
 7 employed to cure and has a greater opportunity to know and observe the patient as  
 8 an individual.” *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987).

9           Where the “treating doctor’s opinion is contradicted by another doctor, the  
 10 [ALJ] may not reject this opinion without providing specific and legitimate reasons  
 11 supported by substantial evidence in the record[.]” *Lester*, 81 F.3d at 830 (internal  
 12 quotation marks and citation omitted). The ALJ can meet the requisite specific and  
 13 legitimate standard “by setting out a detailed and thorough summary of the facts and  
 14 conflicting clinical evidence, stating his interpretation thereof, and making findings.”  
 15 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal quotation marks  
 16 and citation omitted).

17           B.     The ALJ Failed to Provide Specific and Legitimate Reasons for  
 18                     Rejecting the Opinions of Drs. Wu and Tsai

19           Here, the ALJ provided three reasons for rejecting the opinions of Drs. Wu  
 20 and Tsai. (*See* Administrative Record (“AR”) at 26.) The Court addresses – and  
 21 rejects – all three below.

22           First, the ALJ found that the opinions of Drs. Wu and Tsai are not supported  
 23 by objective evidence or the treatment records. (*Id.* at 26.) This characterization,  
 24 however, is inaccurate. The medical record fully documents Plaintiff’s drug  
 25 resistant Hepatitis C with resulting liver disease, inguinal hernia, and shoulder  
 26 injury. The record includes laboratory findings, radiological imaging, and clinical  
 27 assessments supporting Plaintiff’s diagnosis and symptoms. (*Id.* at 317-18, 324,  
 28 326-27, 343-44, 356-407, 425-26, 429, 433-35, 459-61, 473, 478-79, 485-86, 493-

94, 495, 500, 506-10, 560-602, 606-08, 610-11, 613, 616, 618, 620-226, 630, 647-52.) Of particular relevance are the notations in the record of Plaintiff's fatigue, pain, poor concentration, and side effects to medications. (*Id.* at 317, 324, 356-61, 363-64, 433, 473, 485, 493, 560-71, 573, 648.)

Moreover, in finding that the treating source opinions were not supported by the treatment records, the ALJ noted the entries in the record describing Plaintiff's liver disease as stable. (*Id.* at 26.) Although many of the treatment notes classify Plaintiff's condition as "stable/unchanged," this appears to be more of a boilerplate entry than a reasoned assessment of Plaintiff's condition. This is evidenced by the fact that on May 23, 2008, Plaintiff's condition was reportedly "stable/unchanged" while, in the same treatment note, Plaintiff's liver functioning was noted to have worsened and his platelet count had decreased. (*Id.* at 360.) In addition, on September 18, 2007, Plaintiff was reportedly "asymptomatic" and, on November 14, 2007, Plaintiff was reported to be "stable." (*Id.* at 363.) However, on October 18, 2007, Plaintiff's liver functioning had declined enough that it was thought he "may be bumped up on [the] transplant list." (*Id.* at 344.) It is clear from this record that Plaintiff's condition fluctuated often and a notation that he was stable or asymptomatic on any given day is not a reliable indicator of Plaintiff's overall condition. Nor is it proof that the opinions of the treating source as to Plaintiff's ongoing limitations were invalid. Accordingly, this justification by the ALJ does not amount to a legitimate reason for rejecting the opinions of Drs. Wu and Tsai.

Next, the ALJ rejected the opinions of Drs. Wu and Tsai on the basis that the doctors "appear to be advocating for the claimant to receive benefits, rather than simply treating him." (AR at 26.) However, there is no indication in the record that Plaintiff's treating sources offered anything other than an honest assessment. "The Secretary may not assume that doctors routinely lie in order to help their patients collect disability benefits." *Lester*, 81 F.3d at 832. Accordingly, this justification by the ALJ for rejecting the treating source opinions does not amount to a legitimate

1 reason supported by substantial evidence.

2 Finally, the ALJ rejected these medical opinions because the doctors offered  
3 conclusions as to Plaintiff's ability to work, which is an issue reserved to the ALJ.  
4 (AR at 26.) It is true that a treating physician's statement on an issue reserved to the  
5 Commissioner, such as the ultimate determination of whether a claimant is disabled,  
6 is not binding on the ALJ or entitled to special weight. *See McLeod v. Astrue*, 640  
7 F.3d 881, 885 (9th Cir. 2011) ("The law reserves the disability determination to the  
8 Commissioner."); *Ukolov v. Barnhart*, 420 F.3d 1002, 1004 (9th Cir. 2005)  
9 ("Although a treating physician's opinion is generally afforded the greatest weight in  
10 disability cases, it is not binding on an ALJ with respect to the existence of an  
11 impairment or the ultimate determination of disability.") (citation omitted). The ALJ  
12 was, therefore, not bound by the assertions that Plaintiff was unable to work.  
13 However, the fact that a treating physician rendered an opinion on the ultimate issue  
14 of disability does not relieve the Commissioner of the obligation to state specific and  
15 legitimate reasons supported by substantial evidence for rejecting the balance of a  
16 treating physician's opinion. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998);  
17 *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993). This reason, therefore, was  
18 insufficient to reject outright the opinions of Drs. Wu and Tsai.

19 Accordingly, for the reasons stated above, the Court determines that the ALJ  
20 improperly discredited the opinions of Drs. Wu and Tsai. The Court therefore  
21 concludes that the ALJ's decision is not supported by substantial evidence. *Mayes v.*  
22 *Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001).

23 C. Remand is Warranted

24 With error established, this Court has discretion to remand or reverse and  
25 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no  
26 useful purpose would be served by further proceedings, or where the record has been  
27 fully developed, it is appropriate to exercise this discretion to direct an immediate  
28 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).

1 But where there are outstanding issues that must be resolved before a determination  
2 can be made, or it is not clear from the record that the ALJ would be required to find  
3 a plaintiff disabled if all the evidence were properly evaluated, remand is  
4 appropriate. *See id.* at 594.

5 Here, in light of the ALJ's error, the opinions of Drs. Wu and Tsai must be  
6 properly assessed. Therefore, on remand, the ALJ shall reevaluate the treating  
7 source opinions and either credit them as true, or provide valid reasons for any  
8 portion that is rejected.

9 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
10 **REVERSING** the decision of the Commissioner denying benefits and  
11 **REMANDING** the matter for further administrative action consistent with this  
12 decision.<sup>2/</sup>

13  
14 Dated: August 7, 2013



Hon. Jay C. Gandhi

United States Magistrate Judge

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25 <sup>2/</sup> In light of the Court's remand instructions, it is unnecessary to address  
26 Plaintiff's remaining contentions. (*See* Joint Stip. at 5-15, 20-22.) However, on  
27 remand, the ALJ is to reconsider the issue of Plaintiff's credibility, as the ALJ's  
28 internally inconsistent reasoning on this issue is insufficient to support the credibility  
determination. (*See* AR at 28.)